

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeene G. Kelly.

Equitrans, L.P.

Docket Nos. RP05-164-000
RP05-164-003
RP05-164-004
RP05-164-005
RP05-105-000
RP04-203-000
RP04-97-000

ORDER ON UNCONTESTED SETTLEMENT AND
COMPLIANCE FILINGS

(Issued April 5, 2006)

1. On December 9, 2005 Equitrans, L.P. (Equitrans) filed an uncontested offer of settlement (December 9, 2005 Settlement) to resolve all issues raised in the above referenced dockets concerning all matters associated with its Natural Gas Act (NGA) section 4 rate change applications in Docket Nos. RP05-164-000, RP05-105-00, RP04-203-000 and RP04-97-000. The December 9, 2005 Settlement was certified as uncontested by the Presiding Administrative Law Judge on January 18, 2006.¹ The settlement is approved as fair and reasonable and in the public interest subject to Equitrans filing to clarify the effective date of the settlement.

2. Consistent with the settlement, this order will also address Equitrans' August 31, 2005 filing in Docket No. RP05-164-005 wherein it proposed tariff sheets to comply with an order issued on August 1, 2005 (August 1, 2005 Order) in this proceeding regarding Equitrans' proposed Rate Schedule AGS (Appalachian Gathering Service).² Equitrans requests that the compliance tariff sheets be made effective August 1, 2005. The Commission finds Equitrans' compliance tariff language, with one exception, is in

¹ *Equitrans, L.P.*, 114 FERC ¶ 63,006 (2006).

² *Equitrans, L.P.*, 112 FERC ¶ 61,152 (2005).

compliance with the August 1, 2005 Order and permits the compliance and proposed tariff sheets to go into effect subject to Equitrans filing to clarify the effective date of these sheets and subject to conditions.

I. Background

3. On December 1, 2003, Equitrans filed a general rate case in Docket No. RP04-97-000, pursuant to section 4 of the NGA, to comply with the terms of a settlement in Docket No. RP97-346-000 that was approved on April 29, 1999.³ On December 31, 2003, the Commission rejected the rate-related tariff sheets and accepted and suspended tariff sheets related to terms and conditions of service, to be effective June 1, 2004, subject to conditions and to outcome of a technical conference established by that order.⁴

4. On March 1, 2004, Equitrans filed a new general rate case in Docket No. RP04-203-000, pursuant to section 4 of the NGA. Among other things, Equitrans proposed to implement revised rates that reflected the refunctionalization of a substantial number of facilities, including newly-acquired assets formerly owned by Carnegie Interstate Pipeline Company (CIPCO), from transmission and storage to gathering. On March 31, 2004, the Commission issued an order accepting and suspending the tariff sheets, to be effective September 1, 2004, subject to the outcome of a hearing established in that order.⁵

5. In conjunction with its filing in Docket No. RP04-203-000, Equitrans filed, in Docket No. CP04-76-000, an application seeking authority to refunctionalize certain of its existing Equitrans District facilities, as well as significant portions of the newly-acquired former CIPCO facilities, from transmission and storage to gathering. In an order issued on November 23, 2004, the Commission rejected Equitrans' proposal to defer moving its suspended gathering rates into effect,⁶ but in another order issued on that same day, the Commission approved Equitrans' refunctionalization proposal.⁷ On

³ *Equitrans, L.P.*, 87 FERC ¶ 61,116 (1999).

⁴ *Equitrans, L.P.*, 105 FERC ¶ 61,407 (2003), *order on reh'g, Equitrans, L.P.*, 109 FERC ¶ 61,214 (2004).

⁵ *Equitrans L.P.*, 106 FERC ¶ 61,340 (2004), *order on reh'g, Equitrans, L.P.*, 109 FERC ¶ 61,214 (2004).

⁶ *Equitrans, L.P.*, 109 FERC ¶ 61,214 (2004).

⁷ *Equitrans, L.P.*, 109 FERC ¶ 61,209 (2004).

November 30, 2004, Equitrans filed a limited NGA section 4 filing, in Docket No. RP05-105-000, to reflect gathering rates that incorporated the refunctionalized facilities. In an order issued on December 30, 2004, the Commission accepted the gathering rates, effective December 1, 2004, subject to refund and subject to the outcome of a hearing established by that order.⁸

6. On January 28, 2005, Equitrans filed tariff sheets in Docket No. RP05-164-000 to: (1) establish gathering rates for existing gathering facilities, and (2) establish rates for new gathering facilities that Equitrans had recently reacquired. Equitrans also filed to replace Rate Schedules IGS (Interruptible Gathering Service) and APS (Appalachian Pooling Service) with new Rate Schedule AGS (Appalachian Gathering Service). Equitrans explained that the new gathering rates reflected its recent acquisition of non-jurisdictional West Virginia gathering facilities from Equitable Field Services, L.L.C., and its proposal to establish a system-wide gathering charge for use of its gathering facilities. In an order issued on February 28, 2005, the Commission accepted and suspended Equitrans' limited section 4 filing in the instant Docket No. RP05-164-000, for five months, to be effective August 1, 2005, subject to refund and to a hearing and technical conference.⁹ In Docket No. RP05-164-000, Equitrans reserved its right to file a motion to place the tariff sheets into effect at a later date should the Commission suspend the effective date of the proposed tariff sheets for any period. On August 9, 2005, in Docket No. RP05-164-004, Equitrans filed a motion to place all of the tariff sheets suspended by the February 28, 2005 Order in Docket No. RP05-164-000 into effect on August 1, 2005.

7. The technical conference was held on April 12, 2005, followed by comments from the parties. This technical conference was conducted to address Equitrans' proposal to replace Rate Schedules IGS and APS with new Rate Schedule AGS. On August 1, 2005, the Commission issued an order addressing the proposals and comments originating from

⁸ *Equitrans, L.P.*, 109 FERC ¶ 61,384 (2004); *order on reh'g, Equitrans, L.P.*, 111 FERC ¶ 61,112 (2005). In that order, the Commission also consolidated Docket No. RP05-105-000 with the ongoing hearing in Docket No. RP04-203-000. *See Equitrans, L.P.*, 106 FERC ¶ 61,340 (2004). Further, the Independent Oil and Gas Association of West Virginia (IOGA) on June 9, 2005, filed a request for rehearing in Docket No. RP05-164-003. Pursuant to the terms of the December 9, 2005 Settlement at Appendix F, IOGA will withdraw this filing.

⁹ *Equitrans, L.P.*, 110 FERC ¶ 61,194 (February 28, 2005 Order) (the Commission issued an errata on March 4, 2005, to clarify that August 1, 2005 was the correct effective date), *order on reh'g*, 111 FERC ¶ 61,112 (2005).

the technical conference proceeding, and, subject to certain modifications, approved Equitrans' revised proposed Rate Schedule AGS and its newly proposed Rate Schedule PS (Pooling Service) to replace its existing services.¹⁰ On August 31, 2005 Equitrans filed, in Docket No. RP05-164-005, proposed tariff sheets to comply with the August 1, 2005 Order in this proceeding.

8. Equitrans states that, over the past two years, Equitrans, the intervenors, and the Commission Trial Staff (Trial Staff) met numerous times to discuss settlement. After extensive negotiations, on October 17, 2005, all but one of the active participants reached a settlement in principle that would resolve all of the issues set for hearing in this proceeding. On October 18, 2005, the Chief Administrative Law Judge issued an order suspending the procedural schedule. On December 9, 2005, Equitrans filed the settlement. Equitrans states that Appendix A of the stipulation and agreement contains all of the revised *pro forma* tariff sheets to Equitrans' FERC Gas Tariff that are necessary to implement the settled base transmission and storage settlement rates and settled retainage factors and that it will file the *pro forma* tariff sheets in proposed effective form in Equitrans' FERC Gas Tariff within thirty (30) days of the effective date, as defined in section 7.1 of the December 9, 2005 Settlement.

II. December 9, 2005 Settlement

A. Settlement Provisions

9. Article I of the December 9, 2005 Settlement establishes settlement rates and the cost of service that Equitrans will be authorized to charge in settlement of all issues raised in this proceeding. Section 1.1 states that Appendix A sets forth the maximum base transmission and storage settlement rates, effective September 1, 2004 forward, and provides the maximum interruptible gathering commodity rates that will apply for specified time periods, effective November 1, 2005 forward. Section 1.2 provides the products extraction rate that will apply to delivered volumes at Equitrans' Waynesburg compressor station. Section 1.3 states that \$62.8 million is the overall cost of service underlying the settled rates, which was derived on a "black box" basis.

10. Section 1.4 of Article I sets forth how Equitrans will treat post-retirement benefits other than pensions (PBOP). Section 1.4(a) provides that the cost of service underlying the settled rates includes an as filed annual funding amount of \$1.2 million associated with PBOP. Section 1.4(b) provides that in addition to the annual funding amount of \$1.2 million, the cost of service underlying the settled rates also includes a \$1.4 million

¹⁰ *Equitrans, L.P.*, 112 FERC ¶ 61,152 (2005).

annual amortization of the PBOP amounts properly deferred since Equitrans' last rate case. Section 1.4(c) provides that Equitrans will fund a "section 501(c)(9) Trust" (Voluntary Employees Beneficiary Association trust or "VEBA" trust) for the PBOP costs set forth in section 1.4(a) associated with its employees. Section 1.4(d) sets limitations on disbursements from the VEBA trust. Section 1.4(e) sets forth tax accounting provisions for contributions. Section 1.4(f) sets forth provisions for tracking PBOP accruals and amounts contributed. Section 1.4(g) addresses Equitrans' rights in subsequent rate filings with respect to the regulatory assets or liabilities and provides that parties will not challenge such regulatory assets on the ground that the costs were not known, incurred in, or not related to the base or test periods related to such general rate change application. Section 1.4(h) provides a PBOP termination contingency.

11. Article I section 1.5 states that Equitrans will use the *South Georgia* method to amortize its unfunded tax liability as part of the comprehensive inter-allocation of income taxes, as established, and approved, in Equitrans' previous rate case in Docket No. RP97-346-000.¹¹ Section 1.6 resolves issues between Equitrans and Hope Gas, Inc., d/b/a Dominion Hope (Dominion Hope), regarding an extension of service under an existing service agreement, providing that as part of the December 9, 2005 Settlement, Dominion Hope and Equitrans agree that Equitrans will continue to provide service to Dominion Hope pursuant to the same terms and conditions of their existing service arrangement for an additional three year term, then year to year, until terminated by either party, at the rates indicated in this section.

12. Article II addresses the cost allocation and rate design elements underlying the settlement rates. Section 2.1 provides that under the December 9, 2005 Settlement, Equitrans' transmission rates and retainage factors are designed on a system-wide postage stamp basis, without regard to any separately posted rates and retainage factors under the CIPCO District as established initially in Docket No. RP04-203-000. Section 2.2 states that if Equitrans seeks rolled-in rate treatment for its Three Rivers Pipeline facilities in its next rate proceeding, it will bear the evidentiary burden of proving that such rolled-in rate treatment is just and reasonable.

13. Article III contains provisions related to retainage and base gas replenishment. Section 3.1 indicates that for all transmission services the maximum retainage factor will be 3.72 percent of receipt quantity, and for all storage services the maximum retainage factor will be 1.85 percent of receipt quantity. In Section 3.2(a) the settling parties agree that for a period of 10 years from September 1, 2005 (the At-Risk Period), Equitrans is to be solely responsible for managing its storage migration, base gas replenishment, and

¹¹ See *Equitrans, L.P.*, 89 FERC ¶ 61,116 (1999).

transmission and storage fuel usage. Section 3.2(b) states that Equitrans is precluded from seeking recovery of any base gas losses during the At-Risk Period. Section 3.2(c) provides that during the At-Risk Period, Equitrans is also precluded from filing under section 4(e) of the NGA to modify its transmission fuel retention percentage and the settling parties agree to forgo their rights under section 5 of the NGA to modify the transmission fuel retention percentage, until Equitrans has recovered, through its transmission fuel retention percentage, 7.1 Bcf of gas in addition to its actual storage and transmission-related fuel use, and its transmission-related lost and unaccounted for gas (LAUF) volumes. Section 3.2(c) also specifies Equitrans' obligations if it recovers the 7.1 Bcf during the At-Risk Period, and requires Equitrans to file detailed annual reports, to be filed on November 1 of each year, on its fuel and LAUF usage.

14. Section 3.2(d) of the December 9, 2005 Settlement addresses Equitrans' obligations if it recovers all or any portion of the 7.1 Bcf of replenishment base gas. Section 3.2(e) states that from and after September 1, 2005, and prior to the recovery of the 7.1 Bcf of replenishment base gas, any natural gas sales made in association with storage and transmission retainage overrecoveries, other than "netted" sales, will be credited 100 percent to recovery of the 7.1 Bcf. Section 3.2(f) addresses what will occur to revenues from future sales of transmission retainage gas or storage base gas upon completion of the recovery of the 7.1 Bcf of replenishment gas.

15. Section 3.2(g) states that for the purposes of section 3.2(e) and 3.2(f), all purchases and sales of gas by Equitrans will be conducted through competitive bidding. Section 3.2(h) specifies the circumstances under which Equitrans will be required to impute the recovery of the 3.72 percent transmission percentage. In section 3.2(i), the agreement by the settling parties to the provisions of section 3.2(h) will not be construed as agreement that Equitrans may provide fuel discounts, fuel waivers or services pursuant to negotiated rates that are not consistent with Commission policy. Section 3.2(j) states that notwithstanding any provision in this Article III to the contrary, the current retainage discount provided under Contract 419 for deliveries to U.S. Steel Corporation, will not be subject to the retainage imputation during the At-Risk Period. Section 3.2(k) states that within 30 days of the effective date, Equitrans will submit and make effective as of the effective date, the tariff provisions included within the *pro forma* tariff sheets included in Appendix D.

16. Article IV contains numerous provisions that address Equitrans' gathering service. Section 4.1 establishes the gathering service retainage percentages for specific time periods. Section 4.2 establishes limits on the refunctionalization of any existing transmission or storage facilities to gathering. Section 4.3 establishes the conditions under which Equitrans may sell any of its West Virginia gathering facilities to an affiliate.

17. Section 4.4(a) states that Equitrans must file annual reports with the Commission. Section 4.4(b) provides that within 60 days of the effective date Equitrans will provide notice of and meet with members of the Independent Oil and Gas Association of West Virginia (IOGA) and Rate Schedule AGS customers regarding its progress on reducing its LAUF gas and procedures for reporting and review of that progress. Section 4.4(c) provides procedures for verification of previously provided information in the event that follow-up meetings and data responses raise issues which cannot be amicably resolved by IOGA and Equitrans. Section 4.4(d) addresses IOGA's and Equitrans' rights and obligations in the event that the verification of the information demonstrates that Equitrans' actual LAUF is materially less than that retained by Equitrans under its initial retainage rate of 11.50 percent based on the empirical data provided to IOGA in these proceedings and pursuant to section 4.4(b) and 4.4(c) of the December 9, 2005 Settlement. Section 4.4(e) addresses IOGA's, Equitrans' and any other Rate Schedule AGS customer's rights in the event that IOGA avails itself of its rights under section 5 of the NGA to seek changes to Equitrans' gathering retainage factor. Section 4.4(e) also provides that if upon completion of the verification the review yields no material discrepancies, then IOGA's and Equitrans' respective rights under section 4.4(d) will no longer apply.

18. Section 4.5 requires Equitrans to make annual investments of not less than \$2.5 million, to reduce LAUF gas on its West Virginia Gathering system (for a total of \$12.5 million over a five-year period). Section 4.6 provides that Equitrans will consolidate all of its assets functionalized as gathering, and charge for their use a single system-wide, postage stamp gathering rate as provided for in section 1.1(b). Section 4.6 provides that the "Crooked Creek" gathering facilities, recently refunctionalized from transmission to gathering in Docket No. CP04-76, located in Armstrong County, PA will be transferred to the Equitable Gas Company (Equitable) as of the effective date at net book value. In section 4.6, Equitable agrees that for the period of five years following the effective date, Equitable will charge no more than \$0.1656 per Dth and 1.68 percent retainage for the use of the Crooked Creek facilities.¹² Section 4.7 states that Equitrans will make the necessary limited NGA section 4 rate filings with the Commission to effectuate the changes to the gathering rates as provided under section 1.1(b) and the changes to the gathering retainage factors as provided for under section 4.1; the settling parties agree to support or not oppose these filings to the extent that they are required by the December 9, 2005 Settlement.

¹² The Commission notes that as of the date of issuance, neither Equitable nor the referenced gathering rate is subject to the Commission's NGA jurisdiction.

19. Section 5.1 provides that Equitrans is authorized to file and place into effect tracking provisions which will enable it to make limited section 4 filings to recover the costs associated with its compliance with the Pipeline Safety Act of 2002. Section 5.2 provides that Equitrans is authorized to file and place into effect tracking provisions which will enable Equitrans to make limited section 4 filings to recover the costs associated with security-related investments. Section 5.3 addresses Rate Schedule AGS, section 5.4 addresses the withdrawal of Rate Schedules 10SS and 30SS, and section 5.5 addresses the elimination of Equitrans' currently effective fuel tracker. Section 5.6 provides that Appendix D of the December 9, 2005 Settlement contains all of the revised *pro forma* tariff sheets to Equitrans' FERC Gas Tariff that are necessary to implement the provisions of the December 9, 2005 Settlement regarding changes to services and tariff terms and conditions.

20. Article VI of the December 9, 2005 Settlement provides for a moratorium on Equitrans' ability to propose any changes in its transmission and storage rates, retainage percentages, and terms of service. Section 6.1 specifically provides that the moratorium will apply to the commodity and retainage rates applicable to gathering services. Section 6.2 provides that the settling parties waive any rights they may have pursuant to section 5 of the NGA to challenge the level of the settled rates or any other provisions contained in the December 9, 2005 Settlement during the moratorium periods. Section 6.3 establishes that notwithstanding the different moratorium periods set forth in section 6.1, the settling parties will not be precluded from taking any position in any future NGA section 4 general rate proceeding initiated in a manner consistent with this December 9, 2005 Settlement, including any position on cost allocations related to services or functions for which they are not subscribing or for which the rates may or may not be changed because of the provisions of this December 9, 2005 Settlement.

21. Section 7.1 states that the various provisions of the December 9, 2005 Settlement are not severable and that the settlement will not become effective unless and until: (a) the Commission issues an order, no longer subject to rehearing, approving the December 9, 2005 Settlement without any modification or condition that is materially adverse to any party that supported or did not oppose the December 9, 2005 Settlement; and (b) the Commission order approving the December 9, 2005 Settlement waives, if necessary, compliance by Equitrans with the requirements of the Commission's rules and regulations in order to carry out the provisions of the December 9, 2005 Settlement. The effective date will be the first day of the month following the month in which both of the above conditions are satisfied. Section 7.2 provides for when a settling party may withdraw its consent. Section 7.3 states that the settlement rates, fuel retainages, and tariff provisions established pursuant to the December 9, 2005 Settlement, once effectuated pursuant Article VII and adjusted as required pursuant to the terms of the December 9, 2005 Settlement, will remain in effect until the date on which such

settlement rates, fuel retainages, and tariff provisions are superseded by changes effectuated pursuant to section 4 or 5 of the NGA. Section 7.4 establishes procedures for making required changes during the term of the December 9, 2005 Settlement.

22. Article VIII addresses Equitrans' refund obligations. Section 8.1 provides for transmission and storage services refunds for services rendered after September 1, 2004, and section 8.2 provides for gathering service refunds for services rendered after November 1, 2005. Section 8.3 states that the rate refunds for each customer, calculated on the basis of the Article I settlement rates will include interest at the rate provided for under section 154.501 of the Commission's regulations,¹³ applied to the sum calculated for each month from the applicable month to the date that the refunds are made. Section 8.4 provides that Equitrans will file with the Commission a report of settlement refunds setting forth the information required to be included in a report of refunds submitted pursuant to section 154.402 of the Commission regulations, within 30 days of the payment of such settlement refunds.¹⁴

23. Article IX contains general reservations that apply to the December 9, 2005 Settlement. In section 9.1 the settling parties agree that unless and until the settlement becomes effective in accordance with Article VII, it will be privileged and will be inadmissible in evidence nor made part of the record in any proceeding and will not be described or discussed in this or any other proceeding. Section 9.2 states that within 30 days of the effective date, the affected participants will cause the withdrawal, in their entirety and with prejudice, of the court appeals and requests for rehearing identified on Appendix F to the December 9, 2005 Settlement.¹⁵ Section 9.3 states that the settling

¹³ 18 C.F.R. § 154.501 (2005).

¹⁴ 18 C.F.R. § 154.402 (2005).

¹⁵ Appendix F includes the following appeals pending before the U.S. Court of Appeals for the District of Columbia Circuit: Independent Oil and Gas Association of West Virginia Inc. v. Federal Energy Regulatory Commission, Case No. 05-1016 (consolidated with 05-1023); Equitrans, L.P. v. Federal Energy Regulatory Commission, Case Number 05-1023 (consolidated with 05-1016); Independent Oil and Gas Association of West Virginia Inc. v. Federal Energy Regulatory Commission Case Number 05-1215. Appendix F also includes the following request for rehearing pending before the Commission: Request for Rehearing of Independent Oil and Gas Association of West Virginia Docket No. RP05-164-000 (filed June 9, 2005). The Commission notes that although the Appendix F to the December 9, 2005 Settlement states that this request for rehearing was filed in Docket No. RP05-164-000, the correct docket number is Docket No. RP05-164-003.

parties understand and agree that the settlement represents a negotiated package agreement and that its provisions are non-severable in that none of them is agreed to without each of the others. None of the settling parties will be bound by or prejudiced by any part of the settlement unless it is approved and made effective as to all of its terms and conditions without modification, or unless any such modification is agreed to by Equitrans and all settling parties.

24. Article IX states that the provisions of the December 9, 2005 Settlement are intended to relate only to the specific matters referred to, for the specific time periods that the settlement is in effect, and by agreeing to the settlement no settling party waives or will be deemed to have waived any claim or right that it may otherwise have with respect to any matters not expressly provided for in the settlement. Therefore, nothing in the settlement will preclude any settling party from taking any position in any other proceeding or from making any filing that is not inconsistent with its obligations under this settlement. Additionally, except as specifically required by the settlement, nothing in the settlement will alter the burden of any settling party under section 4 or 5 of the NGA with respect to the justness and reasonableness of any aspect of a subsequent filing made by any settling party. Section 9.5 states that Commission approval of the December 9, 2005 Settlement does not constitute approval of, or precedent regarding, any principle or issue in these proceedings. Also, section 9.5 of the December 9, 2005 Settlement states that resolution of these proceedings will not be deemed to be a “settled practice” as that term was interpreted and applied in *Public Service Commission of the State of New York v. FERC*, 642 F.2d 1335 (D.C. Cir. 1980), *cert. denied*, 454 U.S. 880 (1981).

B. Settlement Comments

25. The following parties filed comments in support of the settlement: Trial Staff, PECO Energy Company, PSEG Energy Resources & Trade LLC, the Pennsylvania Office of Consumer Advocate, Equitrans, The Peoples Natural Gas Company d/b/a Dominion Hope and Dominion Hope, and the KeySpan Delivery Companies. No comments in opposition to the settlement were filed. Equitrans filed reply comments.

26. KeySpan states that it supports the December 9, 2005 Settlement, but urges the Commission to condition its approval on a clarification and modification of section 38 of the General Terms and Conditions of Equitrans’ proposed *pro forma* tariff. KeySpan argues that during the settlement negotiations, Equitrans’ agreed to include language in the Pipeline Safety Cost Tracker (PSCT) that would exclude from recovery through the PSCT costs that would otherwise be incurred in the ordinary course of business. Further, KeySpan states that similar language is included in Equitrans’ Security Cost Tracker, and Equitrans should include similar language in its PSCT tariff language. KeySpan requests that Equitrans be required to insert the following at the end of the first sentence of

proposed new section 38.1 (Sheet No. 313): “provided, however, that ‘Qualifying Costs’ shall not include costs associated with operation and maintenance expenses or capital additions made in the ordinary course of business (“Qualifying Costs Proviso”).”

27. IOGA states that it does not oppose the December 9, 2005 Settlement and has reluctantly chosen the course of settlement as the only means of ensuring some reduction in Equitrans’ rates along with some assurance that Equitrans would begin to repair its leaking gathering system and bring its claimed retainage in line with other Appalachian Basin gathering systems owned by interstate pipelines. IOGA states that section 1.1(d) indicates that Equitrans would have to negotiate a rate with a new gathering customer to recover the cost of its construction of additional facilities required to receive or deliver gas, and that such negotiated rates would be subject to Equitrans’ tariff and the Commission’s negotiated rate policy. IOGA states that section 1.2’s product extraction charge does not apply to non-CIPCO gathered gas dedicated or under contract for processing at the Hastings products extraction plant owned by Dominion Transmission, Inc. IOGA indicates that, although the reduction in section 4.1 is not to a level it preferred, it is a start, and should provide incentive for Equitrans to take the necessary steps to reduce LAUF over time or will place Equitrans at risk if it fails to do so.

28. In its reply comments, Equitrans states that it has no objection to KeySpan’s requests and does not object to KeySpan’s condition that Equitrans be required to insert the Qualifying Costs Proviso. Equitrans states that if it is ordered to make that modification as part of its filing to implement the terms of the Settlement, Equitrans will not consider it to be a materially adverse modification within the meaning of Article VII of the December 9, 2006 settlement.

29. Further, Equitrans explains that it believes that responding to IOGA’s comments on a point by point basis would serve no useful purpose, since Equitrans wishes to bring these proceedings to a fair and reasonable conclusion. However, Equitrans does reserve the right to challenge or contest any future position that IOGA may take in any future proceeding regarding the terms of the December 9, 2005 Settlement. Equitrans specifically will not concede the accuracy of or support for the various characterizations by IOGA of the record underlying these proceedings and will not agree with or concede IOGA’s attempts to interpret the meaning or intent of the underlying December 9, 2005 Settlement.

C. Commission Determination

30. The Commission concludes that the December 9, 2005 Settlement, including the language proposed by KeySpan and not opposed by any party, is fair and reasonable, and in the public interest. It is, therefore, approved, subject to Equitrans filing tariff sheets to implement the December 9, 2005 Settlement as clarified with respect to the effective date

of such sheets. Approval of the December 9, 2005 Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding. This order terminates Docket Nos. RP05-164-000, RP05-164-004, RP05-164-005, RP05-105-000, RP04-203-000, and RP04-97-000.

31. The Commission accepts KeySpan's unopposed proposal to require Equitrans to insert the Qualifying Costs Proviso language into its tariff at proposed new section 38.1 to add clarity to the tariff language. Within 30 days of the effective date of the December 9, 2005 Settlement, Equitrans must submit revised tariff sheets reflecting this change. Equitrans must address the effective date of this change when it clarifies the effective date of the tariff sheets submitted with the December 9, 2005 Settlement.

32. Although IOGA indicates that it reluctantly supports the December 9, 2005 Settlement, it did chose to support it. The Commission's policy strongly supports negotiated settlements, because they provide regulatory certainty, promote administrative efficiency for the Commission and eliminate the need for additional financial and personnel resources by the parties on issues resolved through settlement.¹⁶ IOGA choose to support the December 9, 2005 Settlement rather than "expend its resources in a lengthy hearing." IOGA did not raise any substantive issue with the December 9, 2005 Settlement. Therefore, we will not address IOGA's comments here and will approve the settlement as uncontested. IOGA's concerns may be raised at the time they become ripe, for example, when Equitrans files a new rate with a new gathering customer to recover the cost of its construction of additional facilities required to receive or deliver gas.

33. We note that certain of the effective dates proposed for the *pro forma* tariff sheets do not reflect those laid out for certain rates and services in the stipulation and agreement.¹⁷ When filing revised tariff sheets in accordance with the December 9, 2005 Settlement, Equitrans must either file actual tariff sheets that accurately implement the December 9, 2005 Settlement using the effective dates in the stipulation and agreement, or, if the parties intended the effective dates on the *pro forma* tariff sheets to govern, modify the December 9, 2005 Settlement to incorporate those dates and file actual tariff sheets consistent with the modified December 9, 2005 Settlement.

¹⁶ See *San Diego Gas & Electric Co.*, 113 FERC at 61,226 P. 13 (2005). See also *San Diego Gas & Electric Co.*, 112 FERC ¶ 61,176 (2005) at P1.

¹⁷ These discrepancies are identified in Appendix B.

III. Equitrans' August 31, 2005 Compliance Filing

34. On August 1, 2005, the Commission issued an order on technical conference concerning Equitrans' proposed Rate Schedule AGS.¹⁸ The August 1, 2005 Order approved the proposed rate schedule, subject to various changes, to be effective August 1, 2005.

35. On August 31, 2005 in Docket No. RP05-164-005, Equitrans filed in compliance with the August 1, 2005 Order.¹⁹ Equitrans states that its filing addresses the nine findings made by the August 1, 2005 Order, and requests an August 1, 2005 effective date.

36. Notice of the filing was issued on September 8, 2005. Interventions and protests were due as provided in section 154.210 of the Commission's regulations. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2005)), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. IOGA filed a protest, addressed below.

37. The December 9, 2005 Settlement at section 5.3 provides that Equitrans shall implement Rate Schedule AGS as filed, subject to modifications reflected in Appendix D of the December 9, 2005 Settlement and subject to the outcome of the Commission's action in Equitrans' August 31, 2005 compliance filing in Docket No. RP05-164-005. Article 5.6 provides for the effectiveness of the Appendix D tariff sheets to be the effective date of the settlement, which is first of the calendar month following the Commission order approving the December 9, 2005 Settlement no longer subject to appeal as provided in section 7.1.

Commission Determination

38. The Commission finds that, with one exception, Equitrans' filing is in compliance with the August 1, 2005 Order. The tariff sheets are accepted, with the exception of the tariff language discussed below, subject to Equitrans filing to revise the rejected tariff language and to clarify certain other proposed language and to clarify the effective date of these sheets. In the December 9, 2005 Settlement, Equitrans has made ministerial changes to certain Rate Schedule AGS-related tariff sheets to reflect the settlement's rate design and has provided a different effective date than the compliance filing's tariff

¹⁸ *Equitrans, L.P.*, 112 FERC ¶ 61,152 (2005).

¹⁹ The compliance tariff sheets are identified in Appendix A.

sheets. Equitrans is required to clarify if it intends for the Rate Schedule AGS-related tariff sheets found in the compliance filing and Appendix D to the December 9, 2005 Settlement to be effective August 1, 2005 or in accordance with the December 9, 2005 Settlement.

39. The Commission finds that Equitrans' proposed revisions to section 5.2(c) of Rate Schedule AGS do not comply with the Commission's August 1, 2005 Order. Equitrans proposed, in its comments on the technical conference, *pro forma* section 5.2(c) of Rate Schedule AGS, which provided, in pertinent part:

Gathering Aggregation Point title transfers shall be permitted on an interruptible basis. Up to three total transfers are permitted for Customer each month either incoming or outgoing. Transfers may be made to another Customer at the same Gathering Aggregation Point or, subject to approval by Equitrans, to a Customer at a different Gathering Aggregation Point. Gathering Aggregation Point transfers may be effectuated after quantity estimates have been issued by Equitrans and Equitrans has confirmed that the transferring Customer has sufficient supply to effectuate the transfer. Gathering Aggregation Point transfers must be confirmed via the EQUIPATH Electronic Communications System by both the transferring and receiving Customer on or before the 25th working day of the month.

40. The Commission observed that the Commission's regulations provide that tariff provisions may not inhibit the development of market centers.²⁰ The Commission stated that, while Equitrans does not have to provide title transfer tracking, it may not limit the total number of title transfers because that may limit the number of third-party title transfers that enhance the development of market centers on Equitrans' system. The Commission required Equitrans, in its compliance filing, to revise the tariff language to permit unrestricted title transfers by third parties.²¹

41. Equitrans states in its compliance filing that it revised tariff language "to permit unrestricted title transfers by third parties." Proposed compliance section 5.2(c) of Rate Schedule AGS provides:

²⁰ 18 C.F.R. § 284.7(b)(3) (2005).

²¹ August 1, 2005 Order, 112 FERC ¶ 61,152 at P 43 (2005).

Gathering Aggregation Point *imbalance* transfers shall be permitted on an interruptible basis. Up to three total *imbalance* transfers are permitted for Customer each month either incoming or outgoing. *Imbalance* transfers may be made to another Customer at the same Gathering Aggregation Point or, subject to approval by Equitrans, to a Customer at a different Gathering Aggregation Point. Gathering Aggregation Point *imbalance* transfers may be effectuated after quantity estimates have been issued by Equitrans and Equitrans has confirmed that the transferring Customer has sufficient supply to effectuate the *imbalance* transfer. Gathering Aggregation Point *imbalance* transfers must be confirmed via the EQUIPATH Electronic Communications System by both the transferring and receiving Customer on or before the 25th business day of the month. (Emphasis added.)

42. Finally, IOGA states that it is unable to determine how the language of section 5.2(c) of Rate Schedule AGS has been modified to permit unrestricted title transfers by third parties. It states that the Commission should require Equitrans to explain exactly how it has complied with the Commission's order.

43. Equitrans' proposed changes appear to have changed language addressing title transfers to language addressing imbalance transfers. Imbalance transfers were not the subject of the referenced discussion in the August 1, 2005 Order. Further, that order separately addressed Equitrans' proposed Rate Schedule AGS imbalances and imbalance management provisions. The Commission found that they were unclear and required revised tariff language.²² Equitrans, in the instant compliance filing, incorporates by reference its General Terms and Conditions, sections 12.7, Resolution of Imbalances, and 12.8, Netting and Trading of Imbalances. These incorporated sections satisfy the Commission's August 1, 2005 Order with regard to the issue of imbalances and imbalance management. But these sections do not address title transfers. Further, Equitrans' proposed compliance language is not consistent with incorporated sections 12.7 and 12.8 of the General Terms and Conditions. Equitrans' proposal is rejected and it is required to file tariff language consistent with the Commission's August 1, 2005 Order within 30 days of the effective date of the December 9, 2005 Settlement. We believe that this should satisfy IOGA's concern as to *pro forma* section 5.2(c) of Rate Schedule AGS.

44. In the August 1, 2005 Order, the Commission stated that the term "custody transfer point" in *pro forma* section 2.7 of Rate Schedule AGS was unclear, and required Equitrans to include tariff language that clarifies that term when it files its compliance filing. Equitrans' *Pro forma* section 2.7 provided, in pertinent part: "In determining

²² *Id.* at P 49.

quantities available to customer at a Gathering Aggregation Point, Customer's gathering receipts upstream of Gathering Aggregation Point will be adjusted . . . for any deliveries from the gathering system through custody transfer points upstream of the Gathering aggregation Points." In its compliance filing, Equitrans proposed, at section 1.12 of its General Terms and Conditions, to define "custody transfer point" as "any delivery point, upstream of a Gathering Aggregation Point, at which natural gas is delivered from Equitrans' gathering system to a third party."²³

45. IOGA asserts that the new definition of "custody transfer point" should be revised to include any delivery point "at or upstream" of the Gathering Aggregation point. It claims that the purpose of adding a definition of "custody transfer point" was to ensure that gas could be delivered directly off the gathering systems to third party distribution and transmission systems and that some of these delivery points are located at the Gathering Aggregation Point, not upstream of that point. It further asserts that Equitrans has confirmed that its intent to permit such deliveries in both its comments and the compliance filing cover letter, whereas the language limiting "custody transfer point" to delivery points upstream would appear to exclude such custody transfers, inconsistent with Equitrans stated intent. It asks that the Commission require Equitrans to modify the definition.

46. We will not direct Equitrans to make IOGA's requested change as we find that Equitrans has complied with the Commission's directive. The purpose of section 2.7 appeared to be to clarify that gas volumes available to a customer at the Gathering Aggregation Point must reflect the difference between the volumes the customer put into the gathering system at an upstream receipt point and volumes the customer took off the gathering system at a gathering system delivery point upstream of the Gathering Aggregation Point. The provision was unclear because, instead of using the term "delivery points", it used the term "custody transfer points", which was not defined. It has proposed to define that term as meaning delivery points upstream of gathering Aggregation Points where the gas is delivered from Equitrans' gathering system to a third party. Since the proposed section 2.7 refers to "custody transfer points upstream of the Gathering Aggregation Points" it is fully consistent with that provision, albeit redundant, to define "custody transfer points" likewise as points upstream of the Gathering Aggregation Points. Thus, Equitrans complied with the Commission's directive. To accept IOGA's proposal would require a change in section 2.7, which we accepted without modification. The only compliance obligation Equitrans had with respect to the proposed section 2.7 was to define the term "custody transfer points" used in that section,

²³ Equitrans FERC Gas Tariff, Original Vol. No. 1, Substitute Second Revised Sheet No. 202.

not to change that section. Section 2.7 simply clarifies that the volumes available to a customer “at” a Gathering Aggregation Point” are upstream receipts less deliveries at “upstream” points. Defining what it meant by those “upstream” points did not include changing section 2.7 to eliminate the requirement that they be upstream.²⁴ However, Equitrans should clarify in its compliance filing to this order how a delivery to a third party at a Gathering Aggregation Point is intended to be treated for purposes of determining “quantities available to Customer at a Gathering Point” as set forth in section 2.7, and for billing purposes.

47. Finally, IOGA states that Equitrans’ compliance filing appears to include a comparison of the tariff sheets as they were originally filed and not a comparison of the tariff sheets as filed with Equitrans’ post-technical conference comments. IOGA requests that the Commission require Equitrans to file red-lined tariff sheets showing only the changes referenced in the compliance filing so that the parties can determine exactly what changes have been made in compliance with the Commission's August 1, 2005 Order.

48. The Commission will not require Equitrans to file red-lined tariff sheets showing only the changes referenced in the compliance filing. While what IOGA requests may be of convenience to the parties, Equitrans complied with section 154.201(a) of the Commission’s regulations²⁵ to identify proposed changes to its tariff and no party has complained that it was unable to determine if Equitrans complied with the Commission’s directives.

The Commission orders:

(A) The December 9, 2005 Settlement is approved effective in accordance with the provisions of the settlement.

²⁴ Equitrans’ compliance proposal also appears to be consistent with what IOGA proposed in its comments on the technical conference. In those comments, IOGA states:

The term “custody transfer point” is not defined. IOGA submits that the Commission should require Equitrans make this a defined term, in Section 1 of the General Terms and Conditions, that includes any deliveries from the gathering system made to points upstream of the Gathering Aggregation Points. Otherwise, Equitrans must make it clear, in this section, exactly what it means by “custody transfer point.” IOGA comments on the technical conference (May 31, 2005) (emphasis added).

²⁵ 18 C.F.R. 154.201(a) (2005).

(B) Within 30 days of the effective date of the December 9, 2005 Settlement, Equitrans must submit revised tariff sheets in accordance with the settlement reflecting the intended effective dates and the inclusion of Qualifying Costs Proviso language into its tariff at proposed new section 38.1 as discussed above to be effective in accordance with the settlement.

(C) Equitrans' compliance tariff revision filed in Docket No. RP05-164-005 is accepted, with the exception of the language discussed above which is rejected, subject to Equitrans filing to revise the rejected language as directed above and to clarify section 2.7 and the effective date of these sheets. Within 30 days of the effective date of the December 9, 2005 Settlement, Equitrans must submit revised tariff sheets reflecting the intended effective dates of the compliance tariff revision and revised title transfer tariff language as discussed above and consistent with the August 1, 2005 Order.

By the Commission. Commissioner Kelly dissenting in part with a separate statement attached.

(S E A L)

Magalie R. Salas,
Secretary.

Appendix A

**Equitrans' Docket No. RP05-164-005
Compliance Tariff Sheets**

Equitrans, L. P.: Original Volume No. 1

Substitute First Revised Sheet No. 72

Substitute Second Revised Sheet No. 73

Substitute Third Revised Sheet No. 74

Substitute First Revised Sheet No. 76

Substitute Second Revised Sheet No. 77

First Revised Sheet No. 82

First Revised Sheet No. 83

First Revised Sheet No. 84

Sheet Nos. 85-199

Substitute Second Revised Sheet No. 202

Third Revised Sheet No. 203

Substitute Second Revised Sheet No. 204

Second Revised Sheet No. 205

Substitute Second Revised Sheet No. 223

Substitute Second Revised Sheet No. 422

Substitute Second Revised Sheet No. 424

First Revised Sheet No. 460

First Revised Sheet No. 461

First Revised Sheet No. 462

First Revised Sheet No. 463

Sheet Nos. 464-499

Substitute First Revised Sheet No. 504

Rejected

Substitute Third Revised Sheet No. 75

Appendix B

**Effective Dates in Stipulation and Agreement
Compared with *Pro Forma* Tariff Sheets**

	Proposed Settlement Rate	Proposed Settlement Effective Date
Storage Retainage		
Art. 3.1	1.85%	September 1, 2005
<i>Pro Forma</i> Sheet No. 11	1.85%	September 1, 2004
Transportation Retainage		
Art. 3.1	3.72%	Effective Date per Art. 7.1
<i>Pro Forma</i> Sheet No. 11	3.72%	September 1, 2004
Gathering Commodity		
Art. 1.1(b)	\$0.50 dth	November 1, 2005
<i>Pro Forma</i> Sheet No. 6	\$0.50 dth	September 1, 2004
Gathering Retainage		
Art. 4.1	11.50%	Effective Date per Art. 7.1
<i>Pro Forma</i> Sheet No. 11	11.50%	September 1, 2004
Rate Schedules 10SS and 30SS	Cancelled	
Art. 5.4		April 1, 2006
<i>Pro Forma</i> Sheet No. 7		September 1, 2004
Rate Schedule AGS	Implemented	
Art. 5.3		Per Commission determination (8/9/2005)
<i>Pro Forma</i> Sheet No. 6		September 1, 2004

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Equitrans, L.P.

Docket Nos. RP05-164-000
RP05-164-003
RP05-164-004
RP05-164-005
RP05-105-000
RP04-203-000
RP04-97-000

(Issued April 5, 2006)

KELLY, Commissioner, *dissenting in part*:

This order approves a settlement with an explanatory statement that specifies, “to the extent the Commission considers any change” to the settlement, “the standard of review for any such proposed change shall be the ‘public interest’ standard for review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Co.* and *Federal Power Commission v. Sierra Pacific Co.*” As I have previously stated,¹ I believe that approval of such a provision is inconsistent with the Commission’s precedent set forth in *Columbia Gas Transmission Corp.*² I believe that the Commission should preserve its right to take NGA section 5 action under the “just and reasonable” standard when acting *sua sponte* on behalf of a non-party or pursuant to a complaint by a non-party at such times and under such circumstances as the Commission deems appropriate. Therefore, I dissent in part from this order.

Suedeem G. Kelly

¹ See *Southern Natural Gas Co.*, Docket No. RP04-523-000, *et al.* (FERC letter order issued on July 13, 2005).

² 79 FERC ¶ 61,044 (1997).